



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

April 9, 2001

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Ms. Angela M. Buchanan, Treasurer  
Buchanan For President, Inc.  
8233 Old Courthouse Road, Suite 200  
Vienna, Virginia 22182-3816

RE: MUR 5192

Dear Ms. Buchanan:

On April 3, 2001, the Federal Election Commission found reason to believe that Buchanan for President, Inc., and you, as treasurer ("the Committee") violated 2 U.S.C. §§ 441a(f) and 441b of the Federal Election Campaign Act of 1971, as amended (the "Act"). The Factual and Legal Analysis, which formed a basis for the Commission's findings, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's office within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

In order to expedite the resolution of this matter, the Commission has also decided to offer to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Enclosed is a conciliation agreement that the Commission has approved.

If you are interested in expediting the resolution of this matter by pursuing pre-probable cause conciliation, and if you agree with the provisions of the enclosed agreement, please sign and return the agreement, along with the civil penalty, to the Commission. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

**FEDERAL ELECTION COMMISSION  
FACTUAL AND LEGAL ANALYSIS**

**RESPONDENT:** Buchanan for President, Inc., and Angela "Bay" Buchanan, as treasurer

**I. GENERATION OF MATTER**

This matter was generated by an audit of Buchanan for President, Inc. and Angela "Bay" Buchanan, as treasurer, (the "Committee") undertaken in accordance with 26 U.S.C. § 9038(a). Based on information obtained during audit fieldwork, the Audit staff identified checks issued by the Committee totaling \$27,431 that had not been negotiated. On January 14, 1999 in the context of the Audit Report, the Commission determined that this amount was payable to the United States Treasury. The Committee has not made its \$27,431 payment to the United States Treasury.

**II. FACTUAL AND LEGAL ANALYSIS**

**A. LAW**

No person shall make contributions to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed \$1,000. 2 U.S.C. § 441a(a)(1)(A). No candidate or political committee shall knowingly accept any contribution or make any expenditure in violation of the provisions of 2 U.S.C. § 441a. 2 U.S.C. § 441a(f). It is unlawful for any national bank or corporation to make a contribution or expenditure in connection with any election to any political office. 2 U.S.C. § 441b(a).

Contributions which on their face exceed the contribution limitations, and those which do not appear to be excessive on their face, but which exceed the contribution limits when aggregated with other contributions from the same contributor may be either deposited into a campaign depository or returned to the contributor. 11 C.F.R. § 103.3(b)(3). If any such

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contribution is deposited, the treasurer may request redesignation or reattribution of the contribution by the contributor in accordance with 11 C.F.R. §§ 110.1(b), 110.1(k), or 110.2(b), as appropriate. If a redesignation or reattribution is not obtained, the treasurer shall, within sixty days of the treasurer's receipt of the contribution, refund the contribution to the contributor. *Id.*

Publicly-financed primary election committees are required to notify the Commission of any outstanding checks to creditors or contributors that have not been cashed. 11 C.F.R.

§ 9038.6. Committees must inform the Commission of their efforts to locate the payees and their efforts to encourage the payees to cash the outstanding checks. 11 C.F.R. § 9038.6. Committees are required to pay an amount to the United States Treasury for the amount of the outstanding checks. 11 C.F.R. § 9038.6.

## **B. ANALYSIS**

In the context of the audit of the Committee, the Audit Division identified 243 stale-dated checks totaling \$27,431 that were issued by the Committee. Based on a review of a schedule of the Committee's stale-dated checks, 237 of the 243 checks represent refunds of excessive contributions.<sup>1</sup> The remaining checks include: two checks written to individuals without a notation that the payment was a refund of an excessive contribution; three checks of apparent refunds of corporate contributions or checks that were not negotiated by a corporate creditor; and two checks written to non-corporate entities.

In the context of the Audit, the Commission also determined that the Committee owed a repayment of \$44,791 to the United States Treasury. On March 16, 2000, following the administrative review of the repayment determination, the Commission reduced the initial

<sup>1</sup> In the context of the Committee audit, the Commission found that the Committee received \$15,163 in excessive cash contributions, however, the Commission determined not to require a payment with respect to this finding since the excessive portion of the contributions had been refunded, albeit untimely.

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\$44,791 repayment and determined that the Committee must repay \$29,328 to the United States Treasury.<sup>2</sup> On April 12, 2000, the Committee submitted a check to the Commission for \$29,328 for full payment of the repayment determination. However, in a cover letter accompanying the check, the Committee acknowledged that the "payment is only for the repayment determination ... and does not address the Committee's obligation to make payment to the United States Treasury on the separate issue of stale-dated checks." The Committee further stated that it would be submitting its payment for the stale-dated checks "in due course."

Following the April 12, 2000 letter sent by the Committee, the Office of General Counsel sent letters to the Committee dated May 2, 2000 and May 30, 2000 reminding it of its obligation to make its payment for stale-dated checks.<sup>3</sup> The Committee has not remitted the \$27,431 payment to the United States Treasury for stale-dated checks.

Based on a schedule of the 243 stale-dated checks created by the Audit Division, approximately 97% of the stale-dated checks represent refunds of excessive contributions, and two checks were written to corporations. Attachment 2, at 1. The Committee admits it owes \$27,431 to the United States Treasury for stale-dated checks, however after repeated attempts by the Office of General Counsel to collect the debt, the Committee still has not remitted payment.

The Commission's regulations provide a remedy to committees when there are outstanding checks to creditors or contributors that have not been cashed by requiring the

<sup>2</sup> The bases for the Commission's repayment determination was the Committee's use of public funds to defray nonqualified campaign expenses pursuant to 11 C.F.R. § 9038.2(b)(2); and because the Committee failed to provide the Commission with adequate documentation of its disbursements in accordance with 11 C.F.R. § 9038.2(b)(3). However, the existence of stale-dated committee checks is not a basis for repayment under 11 C.F.R. § 9038.2(b), and is therefore not a proper subject of consideration at an administrative review. 11 C.F.R. § 9038.2(b).

<sup>3</sup> Prior to the Committee making its repayment, the Office of General Counsel submitted a letter to the Committee dated March 28, 2000 reminding the Committee that its repayment was due by April 24, 2000, and that the \$27,431 payment for stale-dated checks was also due.

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committee to pay to the United States Treasury the amount of the outstanding checks. 11 C.F.R. § 9038.6. If a payee fails to negotiate a check written by a committee for the purpose of refunding an excessive contribution, or remitting payment for services; the failure to negotiate the payment results in a contribution to the committee. *See* Explanation and Justification for 11 C.F.R. § 9038.6, 52 Fed. Reg. 20674 (June 3, 1987)(stating if a committee has made attempts to pay the funds and has been unsuccessful, the committee must remit a check payable to the U.S. Treasury for the amount outstanding, and using the funds could result in the committee's receipt of a prohibited or excessive contribution).

The Committee's failure to pay the United States Treasury an amount equal to the stated checks results in the Committee maintaining excessive and prohibited contributions from the original payees. Since the Committee has maintained excessive and prohibited contributions, the Office of General Counsel recommends that the Commission find reason to believe that Buchanan for President, Inc., and Angela "Bay" Buchanan, as treasurer, received excessive contributions and prohibited contributions in violation of 2 U.S.C. § 441a(f) and 2 U.S.C. § 441b.